A

PERAM RANUM BHD

v.

KETUA PENGARAH HASIL DALAM NEGERI

B

HIGH COURT MALAYA, KUALA LUMPUR
LAU BEE LAN J
[CIVIL APPEAL NO: R1-14-10-08]
18 SEPTEMBER 2011

C ***REVENUE LAW:*** *Income tax - Appeal - Income Tax Act 1967, s. 60(3)(a) - Interpretation of - Whether there was misdirection in law - Calculation of amount of management expenses deductible - Definition of phrase and words - Realisation of investment - Interchangeable equation of realisation of chose in action with realisation of investment - Whether*
D *a fallacy*

This was an appeal by the appellant against a deciding order of the Special Commissioners of Income Tax ('SCIT') which, in dismissing the appellant's appeal, decided that maturity or uplift of
E fixed deposit could not fall within the meaning of realisation of investment under s. 60(3)(a) and (b) of the Income Tax Act 1967 ('the ITA'). In the present appeal, the issue that arose before the court was pertaining to the correct interpretation of s. 60(3)(a) and (b) of the ITA prior to its amendment with particular
F reference to its application for the calculation of the amount of management expenses deductible in arriving at the adjusted income of life business of a resident life insurer. It was the appellant's contention that the phrase 'realisation of investment' and the words 'investment' and 'realisation' have no definition as they are
G commercial terms and without any statutory definition, they must be understood in their ordinary commercial sense. On the other hand, the respondent argued that equating realisation of a chose in action with realisation of investment as if the two terms were interchangeable, was a fallacy.

H **Held (dismissing appeal with costs):**

(1) There was no misdirection in law in the finding of the SCIT in relation to the meaning of 'realisation of investment'. Equating maturity or uplift of fixed deposit with realisation
I would render the machinery provision of s. 60(3)(b) of the ITA unworkable. (para 14)

(2) The term 'realisation' is defined in *Black's Law Dictionary* 8th edn as (i) conversion of non-cash assets in cash assets; (ii) Tax. An event or transaction such as the sale or exchange of property that substantially changes a taxpayer's economic position so that income tax may be imposed or a tax allowance granted. There are two words inherent in the word 'realisation' being 'conversion' and 'sale'. (para 12)

(3) A fixed deposit may mature multiple times depending on the duration it was kept. If the appellant's contention that realisation occurs each time the fixed deposit matures or is uplifted was accepted, the gross proceeds from the fixed deposit of RM10,000 would multiply to RM40,000 as 'realisation' had occurred four times in that year. The implication is it would grossly inflate the numerator in the formula applicable in determining the deductible management expenses under s. 60(3)(b) of the ITA which is erroneous as the investment for the fixed deposit was only RM10,000. Such contention of the appellant was absurd and would not be in accord with the manner of interpreting s. 60(3)(a) and (b) of the ITA. (para 12)

(4) There was no misdirection in law in the finding of the SCIT on the meaning of "realisation of investment". (para 14)

Case(s) referred to

Director-General of Inland Revenue v. Highlands Malaya Plantations Ltd. [1988] 1 LNS 145 SC ***(refd)***

Edwards v. Bairstow and Harrison [1956] AC 14 ***(refd)***

In re A.B. Ltd [1956] MLJ 197 ***(refd)***

In re Oxford Benefit Building and Investment Society (1887) Ch D 502 ***(refd)***

Ketua Pengarah Hasil Dalam Negeri v. Daya Leasing Sdn Bhd [2005] 2 CLJ 449 CA ***(foll)***

Lower Perak Co-operative Housing Society Berhad v. Ketua Pengarah Hasil Dalam Negeri [1994] 3 CLJ 541 SC ***(refd)***

Mangin v. Inland Revenue Commissioner [1971] AC 739 ***(refd)***

Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

R v. Davenport [1954] 1 All ER 602 ***(refd)***

Sino-Malay Hardware Co Sdn Bhd v. Lim Hung Furniture Co & Anor [1973] 1 LNS 141 FC ***(refd)***

Sorabji Edulji Warden v. Govind Ramji, FN Wadia and another (1892) ILR 16 Bom. 91 ***(refd)***

Legislation referred to:
Income Tax Act 1967, ss. 33(1), 60(3)(a), (b)(ii),

Other source(s) referred to:
Adams The Complete Investment and Finance Dictionary, p 540
Black's Law Dictionary, 8th edn, p 1292
Oxford English Dictionary Volume VIII Poy-Ry, p 203
The Banking Law In Theory and Practice, 4th edn, vol 1, p 80

For the appellant - Nik Saghir Mohd Noor; M/s Nik Saghir & Ismail
For the respondent - Muazmir Mohd Yusop SFC

Reported by Najib Tamby

JUDGMENT

Lau Bee Lan J:

Background

[1] This is an appeal by the appellant, Peram Ranum Bhd, against a Deciding Order of the Special Commissioners of Income Tax ("SCIT") made on 22 February 2008. *Vide* the Deciding Order, the SCIT decided that "maturity or uplift of fixed deposit could not fall within the meaning of 'realization of investment' under s. 60(3)(a) and (b) of the Income Tax Act 1967 ("the ITA") and the appeal of the appellant was dismissed and the Notices of Assessment for the Years of Assessment 1987 (Additional), 1988, 1990, 1991 and 1992 were confirmed. Upon a request of the appellant, the SCIT on 4 March 2008 stated a case ("Case Stated") for the opinion of the High Court pursuant to para. 34 Schedule 5 of the ITA. I had dismissed the appeal of the appellant with costs and hence this appeal.

1.1 The court has considered the written submissions of the appellant and the respondent (encls. 8 and 10 respectively) and the oral submissions and the court's reasons for the decision are set out below.

[2] The question for the opinion of the High Court is whether on the facts as found by the SCIT and contained in the Case Stated the Deciding Order of the SCIT made on 4 March 2008 was correct in law.

[3] The facts admitted or proved as found by the SCIT as a result of the documentary evidence adduced before the SCIT are:

(i) The Appellant is a resident insurance company carrying on the business of underwriting of general and life insurance.

(ii) For the relevant years under appeal the Appellant computed its income tax liability for the life insurance business based on section 60(3) of the [ITA] (before its amendment by Act 531 of 1995).

(iii) The interest income received from fixed deposits by the Appellant has been brought to tax under Section 60(3)(a)(i) of the Act.

Based on the decision to exclude the proceeds received upon maturity or uplift of the fixed deposits the Respondent issued notices of assessments or additional assessment as follows:-

Year of Assessed		Date of Assessment	Tax Payable (RM)
1987	–	30.12.1998	457,101.85
1988	–	30.12.1998	445,052.51
1990	–	30.12.1998	456,091.24
1991	–	30.12.1998	2,197,509.17
1992	–	30.12.1998	2,483,319.12

(iv) The Appellant is aggrieved by such decision of the Respondent and therefore appealed against the above assessments and the relevant Notices of Appeal in Forms Q have been duly submitted.

Issue

[4] Whether the sums received by the appellant upon maturity or uplift of the fixed deposits in the circumstances of this case amount to realization of investment for the purpose of s. 60(3)(b)(ii) of the ITA.

4.1 In other words, the issue for the determination of the SCIT and this court is what is the correct interpretation of s. 60(3)(a) and (b) of the ITA prior to its amendment with particular reference to its application for the calculation of the amount of management expenses deductible in arriving at the adjusted income of life business of a resident life insurer.

A **Appellant's Contention**

[5] The decision in this appeal depends on the interpretation of the phrase "realization of investment" appearing in component B in the Formula.

B 5.1 There is no definition of the phrase "realization of investment" and neither is there any definition of the word "investment" nor the word "realization".

5.2 These are normally commercial terms and as such, in the C absence of any statutory definition, they must be understood in their ordinary commercial sense.

Respondent's Contention

[6] It is a fallacy to equate realization of a chose in action with D a realization of investment as if the two terms are interchangeable.

6.1 Fixed deposit is a form of investment with characteristics that are peculiar from other forms of investment in that issue of realization does not arise.

E 6.2 The maturity/uplift of fixed deposits does not constitute "realization of investment" within the meaning of s. 60(3) of the ITA.

F **Decision**

[7] In *Lower Perak Co-operative Housing Society Berhad v. Ketua Pengarah Hasil Dalam Negeri* [1994] 3 CLJ 541 at p. 552 the Supreme Court approved and followed the principles enunciated in *Edwards v. Bairstow and Harrison* [1956] AC 14 pertaining the duty G of the court when hearing appeals from the SCIT:

> When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything *ex facie* which is bad law and H which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but I to assume that there has been some misconception of the law and that this has been responsible for the determination.

7.1 The court is also mindful that in an appeal to the High Court just like an appeal by the taxpayer to the SCIT against an assessment under the ITA, the onus of proof is on the taxpayer to demonstrate that the assessment should not have been made (see *Lower Perak Co-operative Housing Society Bhd (supra)* at p. 733 H-I to p. 734 A).

[8] Section 60(3) of the ITA (before the Amendment Act 531 of 1995 came into force) as noted by the SCIT reads:

> 60(3) The adjusted income for the basis period for year of assessment from the life business of an insurer resident for the basis year for that year of assessment shall consist of an amount arrived at by:
>
> (a) taking the aggregate of:
>
> (i) the amount of gross income for that period from the investments made out of any of the insurer's life funds; and
>
> (ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realisation of those investments or any rights arising from them; and
>
> (b) deducting from that aggregate:
>
> (i) where paragraph (a)(ii) is applicable for that period to gross proceeds receivable in connection with any investments or rights, the cost of acquiring and realising those investments or rights;
>
> (ii) an amount bearing the same proportion to the management expenses incurred during that period in connection with his life business as the aggregate mentioned in paragraph (a) bears to the total of that aggregate and the amount of gross premiums received by him during that period on account of all life policies in force at the end of that period.

8.1 Further as noted by the SCIT at p. 10 of the Case Stated:

> Both parties agreed that based on the above provision, the formula derived to calculate the amount of deductible management expenses is as follows:

A Gross income from investment (A)

+

Gross proceeds receivable from realization of investment (B) x Management
B ---------- expense
Gross premium received (C) (D)

+

(A + B)

C 8.2 As correctly stated by the SCIT at pp. 10-11 of the Case Stated:

> The dispute between parties arise as a result of the treatment of gross proceeds received upon maturity or uplift of fixed deposits in the formula prescribed under section
D 60(3)(b)(ii) of the Act. The Appellant has included gross proceeds it received upon maturity or uplift of fixed deposit into the numerator and denominator (B) as gross proceeds receivable from realization of investments. On the other hand the Respondent has excluded the gross proceeds
E received upon maturity or uplift of fixed deposits from the numerator or denominator in the above formula on the basis that the maturity or uplift of fixed deposit does not constitute a "realization" of investment for the purpose of section 60(3)(b)(ii).

F **[9]** The appellant citing *The Banking Law In Theory and Practice* 4th edn vol. 1 at p. 80 referring to the view of Sir John Paget contended that the relationship of banker and customer is primarily that of a creditor and a debtor and "[T]he money deposited with him becomes his property and is absolutely at his
G disposal."

9.1 Further the appellant relied on *R. v. Davenport* [1954] 1 All ER 602 where Lord Goddard CJ (delivering the judgment of the English Court of Appeal) at p. 603 stated:

H
> If I pay money into my bank, either by paying cash or a cheque, that money at once becomes the money of the banker. The relationship between banker and customer is that of debtor and creditor. He does not hold my money as an agent or trustee. The leading case of *Foley v. Hill* (1) exploded that idea. When the
I banker is paying out, whether in cash over the counter or whether by crediting the bank account of somebody else, he is paying out

his own money, not my money, but he is debiting me in my account with him. I have a chose in action, that is to say, I have a right to expect that the banker will honour my cheque, but he does it out of his own money. Therefore, this money paid on these cheques was the banker's money, though it led to the customer's account being debited.

9.2 From the aforesaid authorities, the appellant contended that the SCIT erred in not considering the legal character of the money held on fixed deposit belongs to the bank and not the appellant and the legal relationship of banker and depositor.

9.3 I find the appellant's contention to be without merit as it can be seen that the SCIT has considered the same as depicted at pp. 11-12 of the Case Stated:

> It is submitted for the Appellant that because of the relationship of debtor and creditor whereby the bank is the debtor and the Appellant as depositor is the creditor, the deposit money in effect is a loan given by the Appellant to the bank. *Paget's Law of Banking*, Ninth Edition where at page 131 thereof it is stated that:
>
> > Money paid into a deposit account is a loan to the banker, not a specific fund held by him in a fiduciary capacity
>
> As a loan, the bank is obliged to make repayment of the principal plus whatever interest agreed between the bank and the depositor. As such, a loan is in effect an investment by the lender, in this case the Appellant. A fixed deposit is an outlay of capital (money) to produce revenue ie, interest. Hence it conforms to the meanings of "investment" set out in *Black Law Dictionary*.

9.4 However after considering both the appellant's and the respondent's contentions, the SCIT was not persuaded by the appellant's argument but at p. 12 held:

> For us, placing money in the fixed deposit is similar in its character as placing money in the saving account or current account. The only different *(sic)* is the term and condition attach to such account which different *(sic)* does not effect it similar character. Even though fixed deposit may be commercially recognized as a form of investment, in our view the maturity or uplift of fixed deposit is not referred

A to as "realization of investment". When a fixed deposit matures the depositor either withdraw the money or review the fixed deposit account.

B 9.5 From the abovesaid passage from the grounds of decision of the SCIT (referred to at para. 9.4 above), it is clear that the SCIT agreed with the respondent's stand that "[F]ixed deposit … is a form of investment with characteristics that are peculiar from other forms of investment in that the issue of realization does not arise" (p. 12 of the Case Stated).

C 9.6 To illustrate the distinctive features of fixed deposit as opposed to other types of investment eg, shares, I gratefully adopt the distinction drawn by the respondent as tabulated below:

D

Shares	**Fixed Deposit**
Example:	Example:
Acquisition cost (Investment) – RM100	Principal in fixed deposit (Investment) – RM100
E Dividend (Investment Income) – RM5	Interest (Investment Income) – RM5
Profits/Loss on sale – RM50	Profits/Loss – Not applicable
F **Shares**	**Fixed Deposit**
Distinction:	Distinction:
(i) Proceeds received by way of sale.	(i) Proceeds received upon maturity/up-lifting of fixed deposit – no sale involved.
G	
(ii) Upon realization ie sale, investment either appreciates or depreciates or may not change in original value. (par value)	(ii) Upon maturity/uplift, investment does not appreciate or depreciate in value. Principal sum remains.
H	
(iii) Upon realization, change/ transfer of ownership of the asset necessarily follows.	(iii) Upon maturity/uplift, the ownership of the asset remains intact with the depositor.
I	

Shares	Fixed Deposit
Distinction:	Distinction:
(iv) Upon realization, there is a conversion of the shares from a non-cash asset to a cash asset.	(iv) Upon maturity/uplift, no conversion is involved as the fixed deposit is already in cash asset form.
(v) Risks on the capital as the shares may be realized at a loss.	(v) No risks to the principal.
(vi) Non-liquidity – Shares are not easily converted into cash.	(vi) Liquidity – Fixed Deposit is payable at any time.
(vii) Shares may only be transacted once as ownership has been transferred upon sale (non-recurring).	(vii) The same principal sum in Fixed Deposit may be utilised more than once ie, the same principal sum is being used on recurring basis to earn interest.

[10] Flowing from the SCIT's position that fixed deposit is a form of investment *albeit* with different characteristics from other forms of investment, this brings me to the core issue of whether the proceeds received by the appellant upon maturity or uplift of fixed deposits constitute "realization of investments" in terms of s. 60(3)(b)(ii) of the ITA.

10.1 The SCIT held the view that the maturity or uplift of fixed deposit could not fall within the meaning of "realization of investment" as contemplated by s. 60(3)(a) and (b) of the ITA. The reasoning of the SCIT appears at p. 12 of the Case Stated (reproduced in para. 9.4 above) and at p. 13 of the Case Stated as quoted below:

> Fixed deposit is a cash asset as it is payable at any time without losing the principal. When money is deposited it is in the form of cash and remain as cash. When it is withdrawn upon maturity, it is payable in the form of cash. There is no element of conversion or sale in a fixed deposit transaction and the principal amount is guaranteed by the bank and there is no loss incurred by the depositor even when the money is withdrawn before maturity. In other word there is no element of risk which is recognizable in other kind of investments.

A

> On the above reasoning, it is our considered view that maturity or uplift of fixed deposit could not fall within the meaning of "realization of investment" as contemplated by section 60(3)(a) and (b).

B **[11]** The appellant contended that the SCIT erred in its reasoning as:

(i) it did not take into consideration the legal character or status of money held in fixed deposit belongs to the bank and not the appellant; there must necessarily be conversion or
C realization when the bank's property (fixed deposit) is converted into the appellant's property (cash) upon the maturity of the fixed deposit;

(ii) it has determined the issue based on a test unknown in law
D and unsupported by any authority.

11.1 The appellant contended in order to ascertain whether a certain transaction amounts to realization of investment, one of the following tests apply:

E (a) whether there is a transfer of title of ownership of the asset forming the investment; or

(b) whether the asset forming the investment is converted into cash or other form available for distribution.

F 11.2 To support its argument the appellant cited:

(i) the *Oxford English Dictionary* Volume VIII Poy-Ry at p. 203 for the term "realize" to mean "To convert (securities, paper money, etc.) into cash, or (property of
G any kind) into money" and submitted that to withdraw the fixed deposit (which is property) and obtain cash is to "realize" the fixed deposit which is an investment.

(ii) *Sino-Malay Hardware Co. Sdn. Bhd. v. Lim Hung Furniture*
H *Co. & Anor.* [1973] 1 LNS 141; [1973] 1 MLJ 236 where at p. 238, the Federal Court stated:

> Kay J in the case of *In re Oxford Benefit Building and Investment Society* said that "realized profits" must be taken in its ordinary commercial sense as meaning at
I least "profits tangible for the purpose of division". It would seem clear therefore that "realised" means converted into cash or into form whereby it becomes available for immediate distribution.

(iii) *In re Oxford Benefit Building and Investment Society* 1887 35 Ch. D. 502 cited at p. 238 of *Sino-Malay Hardware Co. Sdn. Bhd. (supra)*.

(iv) *In re A.B. Ltd* [1956] MLJ 197 where at p. 198 on what constitutes "realisation of an asset", the Singapore Court held:

> If there is an outright sale of the burial plot so as to transfer the title in the land itself from the respondents to the buyer, then the transaction may properly be said to be a realisation of an asset.

(v) In *R. v. Davenport* [1954] 1 All ER 602 quoting from a passage of Lord Goddard CJ at p. 603 alluded to at para. 9.1 above.

[12] In my considered judgment I find the appellant's contention bears no merit for the reasons hereafter stated. Since it is common ground the word "realization" is not defined in the statute, the court is mindful of the approach to be adopted in interpreting a tax statute as advocated in *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265 at p. 299 following the Privy Council case of *Mangin v. Inland Revenue Commissioner* [1971] AC 739 namely: (i) words are to be given their ordinary meaning; (ii) one has to look at what is clearly said as there is no room for intendment; (iii) the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended; (iv) the history of the enactment and the reasons which led to its being passed may be used as an aid to its construction.

12.1 In determining the ordinary meaning of a word, the court has often resorted to the dictionary as an aid in arriving at a decision (see *Director-General of Inland Revenue v. Highlands Malaya Plantations Ltd.* [1988] 1 LNS 145; [1988] 2 MLJ 99 (SC) at p. 104 G-I).

12.2 Firstly, the term "realization" is defined in *Black's Law Dictionary*, 8th edn p. 1292 as "1. Conversion of non-cash assets into cash assets. 2. Tax. An event or transaction, such as the sale or exchange of property, that substantially changes a taxpayer's economic position so that come tax may be imposed or a tax allowance granted." As correctly

submitted by learned Revenue Counsel, from the aforesaid dictionary definition there are two elements inherent in the word "realization" being "conversion" and "sale". Even based on the *Oxford English Dictionary* definition of "realize" submitted by the appellant (see para. 11.2(i) above), there is the element of "conversion" involving conversion of non-cash assets to cash assets, where the examples of "securities and paper money" and "property of any kind" demonstrate the same.

12.3 In contrast, both the elements of "conversion" and "sale" are found in other kinds of investments like shares and real properties. In the case of real properties in order to realize the investment, there must be a sale and upon sale, the property is converted from its non-cash asset form into cash and in the case of realization of other forms of investments, it entails a transfer of possession or ownership in that the asset would no longer be vested with the original owner. The distinction which I am alluding to becomes very apparent as illustrated by the table referred to in para. 9.6 above on the distinction to be drawn between "fixed deposit" and "share" where even though the fixed deposit is uplifted, the cash is still vested with the depositor and remained in his possession.

12.4 A fixed deposit may mature multiple times depending on the duration it is kept. For eg, a principal sum of RM10,000 fixed deposit kept for, say a duration of three months and upon maturity it is reinvested, it means in a year, the maturity will occur four times. Hence if the appellant's contention that realization occurs each time the fixed deposit matures or is uplifted is accepted, this means that the gross proceeds from the fixed deposit of RM10,000 will multiply to RM40,000 as "realization" has occurred four times in that year. The implication is it will grossly inflate the numerator in the formula applicable in determining the deductible management expenses under s. 60(3)(b) of the ITA which is erroneous as the investment for the fixed deposit is only RM10,000. Such contention of the appellant is absurd and this would not be in accord with the manner of interpreting s. 60(3)(a) and (b) of the ITA (see *Palm Oil Research and Development Board Malaysia & Anor (supra)*).

12.5 I find support also in the tax case of *Ketua Pengarah Hasil Dalam Negeri v. Daya Leasing Sdn Bhd* [2005] 2 CLJ 449 (cited by the respondent). In this case, the respondent was engaged in the provision of leasing, factoring and hire purchase financing facilities. There were expenses and interest payments on loans from the respondent's holding company common to both the leasing and non-leasing businesses which required apportionment between the two sources. There was a difference of opinion between the parties as to the method of calculating the gross income under s. 33(1) of the ITA. The appellant's method was to apportion the common expenses included the entire lease rentals being both interest and capital elements; whilst the respondent's formula argued only the interest element should be taken into account. The majority view of the SCIT upheld the method adopted by the appellant. The appellant appealed against the decision of the High Court which held that the principal should not be taken into account for the apportionment of the common expenses in lease financing as there was no provision in the ITA or in the Income Tax Leasing Regulations 1986 prescribing the manner of doing so in respect of different income sources.

12.6 In allowing the appellant's appeal the Court of Appeal propounded the principles that:

(a) The courts strongly lean against a construction which reduces a statute to a futility. A statute must be so construed so as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pareat (that the thing may rather have effect than be destroyed in order that the thing may be valid rather than invalid). (at p. 463f);

(b) It must also be borne in mind that the rule of strict construction in the sense explained above applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection, and such machinery provisions have to be construed by the ordinary rule of construction (*Gursahai v. CIT* AIR [1963] SC 1062).

> One important consideration in construing a machinery section is that it should be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable. (at p. 463 h-i to p. 464 a).

12.7 Thus following the principles established in *Ketua Pengarah Hasil Dalam Negeri v. Daya Leasing Sdn Bhd (supra)*, I agreed with the respondent's submission that the appellant's contention in equating maturity or uplift of fixed deposit with realization would render the machinery provision of s. 60(3)(b) of the ITA unworkable.

[13] I shall now turn to the authorities cited by the appellant which I agreed with the respondent are distinguishable and are as follows:

(i) In *In re Oxford Benefit Building (supra)*, the facts relate to "realized profits" and not "realization of investment" which is the issue at hand. "Realizing a profit" according to *Adams The Complete Investment and Finance Dictionary* at p. 540 is defined as:

> (1) The actual receipt of money from the sale of personal or real property that is in excess of that property's cost. (2) Taking in revenues by providing a product or service in excess of the costs of operations during a fiscal period.

(ii) In *In re A.B. Ltd. (supra)* the Singapore Court as pointed out by the appellant was considering whether the disposal by a taxpayer (respondent) of burial plots constitute trading in land or a mere realization of assets and the ratio of the court as quoted at para. 11.2(iv) above relates to "realization of assets" and not "realization of investment" and is therefore of no assistance.

(iii) The case of *Sino-Malay Hardware Co. Sdn. Bhd. (supra)* is not relevant as it relies on the ratio in *In re Oxford Benefit Building (supra)* which relates to "realization of profit" which is not the issue in this instance. In the case of *Sino-Malay Hardware Co. Sdn. Bhd. (supra)* the subject matter was an asset under garnishment to satisfy the debt due to the appellant. Hence the asset was not an investment as it was money deposited into court and the court held that realization took place on the date the money was paid into court.

(iv) The Indian case of *Sorabji Edulji Warden v. Govind Ramji, FN Wadia and another* (1892) ILR 16 Bom. 91. relied on by *Sino-Malay Hardware Co. Sdn. Bhd (supra)* dealt with attachment before judgment of money due from a third party. The money was deposited into court. The issue was whether the money (asset) can be said to be realized by sale or otherwise in execution of a decree. Again, like in *Sino-Malay Hardware Co. Sdn. Bhd. (supra)*, the case relates to realization of the money as an asset to satisfy a debt owing to the plaintiff and is not relevant.

[14] Based on what I have outlined above I find there is no misdirection in law in the finding of the SCIT on the meaning of "realization of investment" at p. 13 of the Case Stated as reflected in para. 10.1 above.

[15] For the reasons given I had dismissed the appeal of the appellant with costs.